IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 391 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

USMANBHAI ABDULSATTAR

Appearance:

MR BY MANKAD, APP for Petitioner

RULE SERVED for Respondent No. 1

MR DK MODI for Respondent No. 4, 5

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 14/11/2000

ORAL JUDGEMENT

This is a Criminal Revision Application filed by the State Government under Section 397 of the Criminal Procedure Code, 1973 (In short `Cr.P.C.') challenging the correctness, legality and propriety of an order dated

12th May, 1998, below written reply Exh.13 presented by complainant Food Inspector in reply to application Exh.7 presented by accused i.e. present Revision Opponents No.1 to 4 for discharging them from the case.

2. The facts leading to this Criminal Revision Application in a nutshell are as follows:

2.1 Complainant Shri N.M.Bhatt, who is a Food Inspector filed a complaint against five accused for offence punishable under Sec.16(1)(a) read with Sec.7(ii) of the Prevention of Food Adulteration Act, 1954, (hereinafter referred to as `the Act') for contravention of Sec.14(A) and Rule 32(e) of the Prevention of Food Adulteration Rules, 1955, (same will be referred to hereinafter as the Rules), in the Court of learned Chief Judicial Magistrate, Bhavnagar, (who will be referred to hereinafter as `the learned Magistrate') on or about 29.8.96. In proceeding of that case accused appeared and submitted one application Exh.7 requesting the Court to discharge them from the case on the ground that there is no contravention of Rule 32(e) of the Rules and, therefore, they be discharged. Food Inspector submitted his written reply Exh.13 contesting that application. After taking into consideration the written reply Exh.13, and after hearing the arguments of the learned advocates for both the parties, the learned Magistrate has come to a conclusion that Food article is "Dhana Dal" and pouch of that "Dhana Dal" was seized. It is the case of the Prosecution that, each pouch of that "Dhana Dal" was weighing about 3 grams. Therefore, the learned Magistrate has come to conclusion that Rule 32(e) of the Rules is not applicable to the present case. He was by passing an order dated 12.5.98 pleased to stop the proceedings initiated against the accused. It appears that by mistake he passed said order below Exh.13 being Written Reply Exh.13 instead of Exh.7. He ought to have passed said order below Exh.7. As against that order below Exh.13, the State Government has preferred this Criminal Revision Application.

3. I have heard Shri B.Y.Mankad, learned APP for the Revision Petitioner - State and Mr.D.K.Modi, learned advocate for the Opponents.

4. Shri D.K.Modi, learned advocate for the accused has argued that Rule 32 of the Rules requires that every package of food shall carry a label and unless otherwise provided in Rules, there shall be specified on every label the particulars with regard to clauses (a) to (f). As per case of Prosecution, accused has contravened Rule

32(e) of the Rules, which reads as follows:

"32. Package of food to carry a label:- Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label:-

(a) the name, trade name or description of food contained in the package;

(b) the names of ingredients used in the product in descending order of their composition by weight or volume as the case may be:

Provided that in the case of artificial flavouring substances, the label may not declare the chemical names of the flavours, but in the case of natural flavouring substances or nature-identical flavouring substances, the common name of flavours shall be mentioned on the label:

(c) the name and complete address of the manufacturer or importer or vendor or packer;

(d) the net weight or number or measure of volume of content, as the circumstances may require, except in the case of biscuits, breads, confectionary and sweets where the weight may be expressed in terms of either average net weight or minimum net weight.

(e) A distinctive batch number of lot number or code number, either in numericals or alphabets or in combination, the numericals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words Batch No., or Batch, or Lot No., or Lot any distinguishing prefix:

(f) the month and year in which the commodity is manufactured or prepacked:

Shri Modi has drawn an attention of this Court to third Proviso below Rule 32 which reads as follows:

"Provided further that in case of carbonated water containers and the packages of biscuits, confectionery and sweets, containing more than 60g,but not more than 120g and food packages weighing not more than 60g, particulars under clauses (d) and (e) need not be specified."

4.1 In view of this, as per arguments of Mr.Modi, when pouch of "Dhana Dal" was weighing only 3 (Three) grams requirement of Sub-rule (e) of Rule 32 is not to be complied with as exemption has been given by this third proviso. The words "food packages weighing not more than 60 grams" are used in above third proviso. The words "food packages" include all types of packages of all types of food-articles. In view of this, third proviso is applicable to the present case and, therefore, an order which is challenged in this Criminal Revision Application cannot be said to be illegal, incorrect or perverse.

5. In view of this, this Criminal Revision Application deserves to be dismissed. Accordingly it is dismissed. Rule is discharged.

(H.H. Mehta,J.)

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